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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations,)

Gainesville, Lewisville, Coriscana,)
Robinson, Jacksboro and)
Mineral Wells, Texas)

MM Docket No.
RM No.

RM-8854

TO: Chief, Mass Media Bureau

OPPOSITION TO PETITION FOR RULE MAKING

Jerry Snyder and Associates, Inc., ("Snyder"), licensee of KYXS-FM, Mineral Wells, Texas, by its attorneys, hereby respectfully submits its opposition to the above-captioned Petition for Rule Making filed by Heftel Broadcasting Corporation ("HBC") on July 26, 1996. In opposition thereto it is stated as follows:

I. **HBC's Petition is Based on a False Premise**

The HBC petition is based on a premise that simply is not true. While HBC might hope through wishful thinking that Snyder has no desire to construct an FM station on Channel 240 C1 as allotted to Mineral Wells, Texas that premise is simply not true. A great deal of time and effort on both HBC's part and the FCC's part would have been saved had HBC made any effort to determine the validity of its premise that Snyder had

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in fact, done that which HBC factually asserts at P. 9 of its petition:

"Nearly two years have passed without any action on the part of the licensee [Snyder], thus clearly demonstrating not only the lack of desire by the licensee for Class C1 facilities at Mineral Wells but, of greater importance, the lack of need for Class C1 facilities at that location."

Research into the history of KYXS-FM's evolution should have made it clear that Snyder had a strong desire to maximize its facilities. Initially, Snyder improved its facilities from a Class A to a Class C3 facility by expressing its intent to do so in 1990 - See Report and Order, 5 FCC Rcd 2152 (1990). Subsequently, Snyder petitioned the Commission to amend the table of allotments to substitute Channel 240 C1 for Channel 240 C3 - See Table of FM allotments, Mineral Wells and Winters, Texas, 7 FCC Rcd 1791 (Chief, Allocations Branch 1992). Thereupon, Snyder filed for and received a construction permit (BPH-920925ID) for the C1 facility. Upon its expiration that permit was cancelled by the Commission on December 13, 1994.

Had HBC made an actual inquiry of Snyder as to why the C1 permit was allowed to expire, HBC would have found that it was not for "lack of desire" as HBC alleges in its petition, but rather because of loss of site availability. In order to provide C1 service to 424,500 people in 16,300 square kilometers living in rural Texas it was necessary for Snyder to construct a 1465 foot tower. Obviously, a tower site to meet these needs is not readily available even in rural Texas.

On November 25, 1996 Snyder filed a new application for C1 facilities specifying the former site. As Snyder explained in that application (See Attachment 1). Snyder spent a great deal of time and money in pursuing the various rulemakings and in

prosecuting the C1 application. Key to that was the availability of a suitable site. A local landowner gave Snyder verbal assurance that the landowner would make available to Snyder a sufficient portion of a large tract of land he owned on which to build the tower specified in the application. Subsequently, the landowner died. Snyder made numerous contacts with the land owner's heirs, but Snyder had no success in getting the verbal agreement honored. The heirs apparently wanted to sell the entire tract, which was not only far too much land for Snyders purpose, but economically prohibitive. Eventually, the tract of land was sold by the heirs to the Palo Pinto County Municipal Water District Number One to be used for a reservoir. Since the reservoir constructed by the Water District did not require all of the land contained in the tract and specifically did not include the site for which Snyder previously had received FAA consent to construct the tower, Snyder entered into discussions with the legal representative of the Water District. Subsequently, Snyder received reasonable assurance from the Water District that the unused site would be available to Snyder to construct the tower - See Attachment No. 2. A representation by a governmental agency that it is willing to lease the property for a transmitter site meets the FCC's reasonable assurance criteria. See, Alden Communications Corp., 3 FCC Rcd 3937, 3938 ¶ 10 (1988).

On November 25, 1996 Snyder filed an application for a new permit to modify KYXS-FM to C1 status specifying the Palo Pinto Water District site. On January 1, 1997 the FCC issued a public notice (Report No. 23912) accepting Snyder's application for filing (FCC File No. BPH-961125IG).

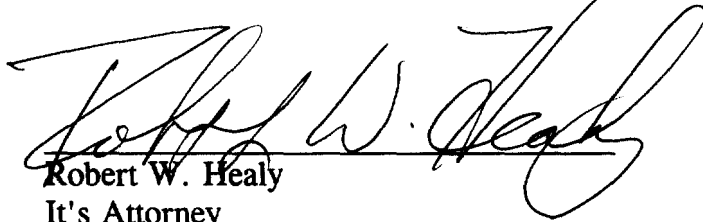
II. Public Interest Considerations

Thus, HBC was in error when it stated that there "was a lack of desire by the licensee [Snyder] for Class C1 facilities at Mineral Wells." Equally unsupported is HBC's assertion that there was a "lack of need" for the C1 allotment at Mineral Wells. The FCC made a determination of need when it allotted the C1 Channel to Mineral Wells in 1992. The selected site met the zoning requirements and had FAA clearance. Snyder could not reasonably have foreseen that the property owner would die and his heirs would be unwilling to honor his verbal commitment. Loss of site availability is not uncommon in FCC filings. See, e.g., Evergreen Broadcasting Company, 6 FCC Rcd 5599, 5603 (1991). However, loss of site after Snyder spent a great deal of money and effort in pursuing the C1 allotment does not prove "lack of need" as HBC asserts.

In light of the above it is respectfully submitted that Heftel Broadcasting Corporation's above-captioned petition for rule making should be denied.

Respectfully submitted,

JERRY SNYDER AND ASSOCIATES, INC.



Robert W. Healy
It's Attorney

Smithwick & Belendiuk, P.C.
1990 M Street, NW
Suite 510
Washington, DC 20036

February 5, 1997

Proposed Minor Modification

Jerry Snyder and Associates, Inc. ("Snyder") was the proponent of a rulemaking in MM Docket No. 90-555 to modify the facility's of KYXS-FM to substitute Channel 240 C1 for Channel 240A at Mineral Wells, Texas. When that rulemaking petition was granted, Snyder filed for and received a construction permit for the C1 operation.

Snyder's application for the modified permit relied on the availability of land for the transmitter site on a verbal agreement with the property owner. After the construction permit was issued, the property owner died. Snyder made a number of contacts with the deceased's widow and his son, but they were not willing to discuss the matter further at that time.

Unsuccessful attempts were made to find an alternative site at which a very tall tower could be located, and which site would meet zoning and other requirements. There are other tall towers near the proposed site so that was not a problem there.

Faced with loss of the proposed site and no alternative site being available, Snyder concluded that despite all the time and money expended on the project, then there was no choice but to let the permit expire.

Eventually, the estate sold the large tract of land, on which a small portion was to be used for Snyder's tower, to the Palo Pinto County Municipal Water District for the purpose of constructing a reservoir. The Water District did not need all of this land for its needs, but had to purchase all of it from the estate. When Snyder inquired of the Water District's representatives as to whether the Water District would be willing to lease

that portion of the land which Snyder had originally planned to use for the tower, and which was not being used by the Water District for the reservoir, the Water District recently agreed to do so.

Thus, this application proposes to use precisely the same site specified in the prior application. Having lost reasonable assurance of use of the site due to the death of the owner, it became apparent to Snyder that the estate was only looking to sell the large tract of land and would not impede that possible sale by leasing a portion of it to Snyder for a tall radio tower. It was only the fortuitous circumstance that the land was purchased by the Water District, which did not have any need to use that portion of the land that Snyder had planned to place its tower, that made this filing once again possible.

ATTACHMENT # 2

PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NUMBER ONE
MINERAL WELLS, TEXAS

November 19, 1996

Mr. Jerry Snyder
Radio Station KYXS
One Radio Road
Mineral Wells, Texas 76067

PLEASE
DELIVER TO
BOB
HEALEY

Dear Mr. Snyder:

The Board of Directors of Palo Pinto County Municipal Water District No. 1 has authorized negotiations with you for the installation of a transmitter tower on the Water District property lying between Highway 281 and the Inspiration Point road in Palo Pinto County, Texas.

You are authorized to have your engineers go on the property at any time to make any examinations or studies necessary. Before any entry is made on the property, which will be necessarily done through the gate to the filter plant, you will need to contact me so that I can authorize Mr. Bob Spencer at the filter plant to permit your entry.

Very truly yours,



William S. Graham,
President

WSG/lss

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on this 5th day of February, 1997, copies of the foregoing were mailed, postage prepaid, to the following:

Pamela Blumenthal, Esq.*
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 8308
Washington, DC 20554

Lee W. Shubert, Esq.
Haley, Bader & Potts, P.L.C.
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1632


Lisa M. Balzer

* Hand Delivered